



Comptroller General
of the United States

94069

Washington, D.C. 20548

Decision

Matter of: Analytica, Inc.
File: B-258324
Date: September 2, 1994

DECISION

Analytica, Inc. protests the Department of the Treasury's determination to set aside a procurement under the section 8(a) program.

We dismiss the protest.

Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988 and Supp. V. 1993), authorizes the Small Business Administration (SBA) to enter into contracts with government agencies and to arrange for the performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns. Because of the broad discretion afforded the SBA and the contracting agencies under the applicable statute and regulations, our review of actions under the Section 8(a) program generally is limited to determining whether government officials have violated regulations or engaged in fraud or bad faith. See 4 C.F.R. § 21.3(m)(4); Lecher Constr. Co.--Request for Recon., B-237964.2, Jan. 29, 1990, 90-1 CPD ¶ 127.

The protester asserts that an 8(a) set-aside here would violate certain provisions of the Federal Acquisition Regulation (FAR) because the procurement of the services involved previously was effected through a small business set-aside. The regulations, however, do not preclude an award through the 8(a) program under the circumstances here. First, while FAR § 19.804-1 states that agencies should consider, among other things, whether the items or work previously were acquired through small business set-asides, it does not prohibit an 8(a) acquisition where a small business set-aside was previously used. Neither do the SBA regulations. See 13 C.F.R. § 124.309 (1994). Second, FAR § 19.501(g) does not itself require a repetitive small business set-aside. It states only that such set-asides normally will be made "if required by agency regulations." The protester has not referred us to any Treasury Department regulation so requiring.

We note that SBA's regulations do provide that SBA will not accept a procurement for the 8(a) program if SBA determines that acceptance would have "an adverse impact on other small business programs or on an individual small business" 13 C.F.R. § 124.309(c). The protester has not alleged, however, that SBA has not complied with this regulation.

Accordingly, we have no basis to consider this matter. The protest is dismissed.

for James A. Spangenberg
Ronald Berger
Associate General Counsel